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*Attorneys For plaintiff GLENN BERRY*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GLENN BERRY,	)	CASE NO.
	)	
Plaintiff,	)	<b>COMPLAINT FOR DAMAGES</b>
	)	
vs.	)	1. VIOLATION OF 42 U.S.C. §
	)	1983: FOURTH AMENDMENT
CITY AND COUNTY OF SAN	)	(EXCESSIVE FORCE)
FRANCISCO and POLICE OFFICER	)	2. VIOLATION OF CALIFORNIA
ANTHONY ASSERETO,	)	CIVIL CODE §52.1
	)	3. BATTERY
Defendants.	)	4. INTENTIONAL INFLICTION OF
	)	EMOTIONAL DISTRESS
	)	
	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
	)	

Plaintiff Glenn Berry, by and through his attorneys, BRENT, FIOLE & PRATT LLP, for his Complaint against defendants, states as follows:

**INTRODUCTION**

1. This action arises out of a racially motivated illegal and unconstitutional application of excessive force on plaintiff Glenn Berry (hereafter "Mr. Berry") by officers of the police department of the defendant City and County of San Francisco. It is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth Amendment to the United States Constitution, and the statutory and common law of California.

**JURISDICTION**

2. Subject matter jurisdiction over the claims stated in this action is founded upon 28 U.S.C. §§ 1331 and 1343(a)(3) and(4), and the aforementioned statutory and constitutional provisions. This Court has pendent jurisdiction over the plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

3. Plaintiff has filed the state law claims contained herein within the time periods prescribed by California Government Code §§ 911.2 and 945.6. The requisite claim was filed on June 16, 2016, within six months of the incident underlying the claim, and that claim was rejected on July 12, 2016. Each and all of the administrative requirements precedent to bringing suit against these defendants and upon the causes of action set forth herein have been fulfilled.

**INTRADISTRICT ASSIGNMENT**

4. All of the events and/or omissions complained of herein occurred in the County of San Francisco, and this action is properly assigned to the Oakland or San Francisco Division.

**PARTIES**

5. Mr. Berry was at all relevant times a 35 year old, law-abiding resident of the City of San Francisco who was employed as a janitor by the Community Housing Partnership at 519 Ellis Street in San Francisco.

6. Defendant City and County of San Francisco is a public entity established by the laws and Constitution of the State of California, and owns, operates, manages, directs, and controls the San Francisco Police Department, which employs other defendants in this action.

7. At all times mentioned herein the individual defendants were officers, sergeants, lieutenants, employees and representatives of the Police Department of the defendant City and County of San Francisco. At all times relevant hereto, each of them were acting within the course and scope of their employment by the City and County of San Francisco, and the wrongful acts hereinafter described flow from the very exercise of their authority. They are sued in their individual and personal capacity.

8. Plaintiff is informed and believes and thereon alleges that each of the defendants

1 sued herein was responsible in some manner for the events and happenings as hereinafter  
2 described, and proximately caused injuries and damages to the plaintiff. Further, one or more  
3 currently unidentified defendants also was responsible for the events and happenings as  
4 hereinafter described, and proximately caused injuries and damages to the plaintiff.

5 9. At all material times, each defendant acted under color of the laws, statutes,  
6 ordinances, and regulations of the State of California and the United States.

7 **GENERAL ALLEGATIONS**

8 10. On February 2, 2016, at or about 12:45 pm, Plaintiff Glenn Berry was near the  
9 end of his lunch break and was speaking with a fellow employee while standing in front of his  
10 place of employment, the Community Housing Partnership at 519 Ellis Street in San Francisco.

11 11. Unbeknownst to Plaintiff, a mentally unstable individual who had accosted him  
12 on the street placed a call to 911 falsely reporting that the plaintiff was carrying a weapon, and  
13 several officers of the San Francisco Police Department, including defendant Officer Anthony  
14 Assereto, responded to the call.

15 12. Without anything other than the unverified claim of an individual whose veracity  
16 was completely unknown, Officer Assereto approached Plaintiff Berry with a drawn gun and  
17 demanded that Plaintiff Berry get on the ground. Plaintiff began to comply with the order, but  
18 before he had the time to do so, Officer Assereto kicked Plaintiff Berry onto the ground and  
19 continued to kick and stomp on him, even after he was restrained by other officers. Other  
20 officers whose identities are currently unknown to plaintiff Berry joined in kicking Plaintiff  
21 Berry, and also pushed and kicked the fellow employee that Plaintiff Berry had been speaking to  
22 as she attempted to tell them that Plaintiff Berry had no gun.

23 13. At no point did Plaintiff Berry physically resist arrest or ignore the directions  
24 given to him.

25 14. Notwithstanding Plaintiff's Berry's total compliance with the directions given to  
26 him, as other officers held Plaintiff Berry on the ground, Officer Assereto dishonestly shouted to  
27 Plaintiff Berry that he had better stop resisting, or he would shoot him, putting Plaintiff Berry in  
28

1 fear for his life and causing him to suffer severe emotional distress.

2 15. Plaintiff Berry was not carrying a gun at the time of the aforementioned incident.

3 16. When he visited the precinct station after the incident to file a complaint about the  
4 physical assault committed by defendant Assereto and the other officers, Plaintiff Berry  
5 fortuitously passed near Officer Assereto, who proceeded to insult and belittle Plaintiff Berry.

6 **FIRST CAUSE OF ACTION UNDER 42 U.S.C. § 1983 FOR UNREASONABLE USE OF**  
7 **FORCE IN VIOLATION OF THE FOURTH AMENDMENT (PERSONAL CAPACITY),**  
8 **AGAINST DEFENDANT ANTHONY ASSERETO**

9 17. Plaintiff Berry re-alleges each and every paragraph as if fully set forth herein.

10 18. Defendant Assereto, as well as several officers whose identities are currently  
11 unknown, acting under claim of governmental authority, used unreasonable, excessive force in  
12 detaining plaintiff Glenn Berry, violating Plaintiff Berry's rights under the Fourth Amendment of  
13 the United States Constitution, and causing Mr. Berry serious pain and suffering and physical  
14 and emotional injuries.

15 19. As a result of the aforementioned defendants' unlawful conduct Plaintiff Berry  
16 suffered economic losses, great humiliation, embarrassment, and mental suffering, all to Plaintiff  
17 Berry's damage.

18 20. Plaintiff Berry is entitled to seek damages suffered as a result of the above-  
19 described conduct pursuant to 28 U.S.C. §§ 1983 and 1988.

20 21. The aforementioned individual defendants acted maliciously and with wanton  
21 disregard of Plaintiff Berry's rights and feelings for which Plaintiff Berry seeks punitive  
22 damages.

23 **SECOND CAUSE OF ACTION**  
24 **UNDER CALIFORNIA CIVIL CODE § 52.1**  
25 **AGAINST ALL DEFENDANTS**

26 22. Plaintiff Berry re-alleges each and every paragraph as if fully set forth herein.

1           23.     Using threats, intimidation, and coercion, the defendants interfered with Plaintiff  
2     Berrys' rights and privileges secured under the Fourth Amendment and the Fourteenth  
3     Amendment to the United States Constitution, and the laws of the State of California and the  
4     California Constitution.

5           24.     Defendants subjected Plaintiff Berry to Defendants' wrongful conduct, depriving  
6     Plaintiff Berry of rights described herein, knowingly, maliciously, and/or with conscious and  
7     reckless disregard for whether the rights and safety of Plaintiff Berry would be violated by their  
8     acts and/or omissions.

9           25.     As a direct and proximate result of Defendants' acts and/or omissions as set forth  
10     above, Plaintiff Berry sustained injuries and damages as set forth above.

11           26.     The conduct of Defendants entitles Plaintiff Berry to an award of actual damages,  
12     punitive damages up to three times actual damages, a civil penalty of \$10,000, and attorneys'  
13     fees and costs pursuant to California Civil Code §§ 52 and 52.1.

14                           **THIRD CAUSE OF ACTION**  
15                           **FOR BATTERY AGAINST ALL DEFENDANTS**

16           27.     Plaintiff Berry re-alleges each and every paragraph as if fully set forth herein.

17           28.     Defendant Anthony Assereto intended to and did cause violent and offensive  
18     physical contact with Plaintiff Berry's person when he kicked and beat Plaintiff Berry without  
19     provocation or justification.

20           29.     Plaintiff Berry did not consent to the violent and offensive contact by defendant  
21     Assereto.

22           30.     The aforementioned violent and offensive acts by the individual defendant was  
23     committed by him while he was in the course and scope of his employment by the defendant  
24     City and County of San Francisco.

25           31.     Defendant City and County of San Francisco is liable for the aforementioned  
26     actions of its co-defendant employee by operation of law.

27           32.     As a proximate result of those defendants' intentional and wrongful conduct,  
28     Plaintiff Berry suffered economic and non-economic damages, including by not limited to

1 physical pain and suffering, emotional distress, loss of ability to work and lost earnings, and  
 2 medical expenses.

3 **FOURTH CAUSE OF ACTION FOR INTENTIONAL**  
 4 **INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS**

5 33. Plaintiff Berry re-alleges each and every paragraph as if fully set forth herein.

6 34. The conduct of defendant Anthony Assereto in threatening to shoot Plaintiff  
 7 Berry in the back, and in ridiculing and belittling Plaintiff Berry when Plaintiff Berry exercised  
 8 his right as a citizen to complain about police misconduct, was outrageous, especially  
 9 considering that the conduct was that of a peace officer sworn to protect the public, and the  
 10 conduct was designed to and did inflict severe emotional distress on Mr. Berry.

11 35. The aforementioned conduct constituted oppression and/or malice as defined in  
 12 Civil Code section 3294. Mr. Berry should recover, in addition to actual damages, damages to  
 13 make an example of and to punish the defendant, because his conduct as a peace officer sworn to  
 14 uphold the law and protect the public was despicable, and was done with a willful and knowing  
 15 disregard of the rights and safety of Mr. Berry, leading to the injuries and damages suffered by  
 16 Mr. Berry.

17 WHEREFORE, Plaintiff Berry prays for judgment as follows:

18 (1) For general damages, including to compensate him for emotional distress, pain  
 19 and suffering, according to proof at the time of trial,

20 (2) For special damages, including loss of earnings and the cost of medical care,  
 21 according to proof at the time of trial;

22 (3) For punitive and exemplary damages as against the individual defendant as  
 23 indicated above, commensurate with the acts complained of herein;

24 (4) For other damages. penalties, costs, interest, and attorney fees as allowed by 42  
 25 U.S.C. §§ 1983 and 1988, and as otherwise may be allowed by federal law;

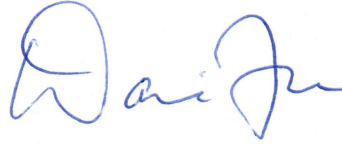
26 (5) For actual damages, punitive and exemplary damages, a civil penalty of \$25,000,  
 27 and attorneys fees pursuant to California Civil Code § 52.1, and

28 ///

(6) For such other and further relief and damages as the Court may deem just and proper.

Dated: January 5, 2017

BRENT, FIOL & PRATT LLP



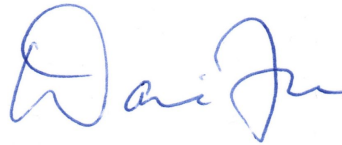
By: \_\_\_\_\_  
David L. Fiol

**DEMAND FOR JURY**

Plaintiff Berry hereby requests a trial by jury.

Dated: January 5, 2017

BRENT, FIOL & PRATT LLP



By: \_\_\_\_\_  
David L. Fiol